

HIMACHAL PRADESH PUBLIC WORKS DEPARTMENT

“MEMORANDUM”

WHEREAS, the following CWP(s) have been filed before the Hon'ble High Court of Himachal Pradesh by Junior Engineers working in HP.PWD., for counting their contract services for seniority, promotion, increment and other service benefits from the date of appointment in the department:-

Sr. No	Name	DoB	DoA on cont.	Date of Regularization	Court Case No.
1	Prem Prakash Amrate (Now AE)	5.2.72	20.2.96	28.2.2004	CWP No. 13116/2024
2	Dalip Singh Tomar & Others. (Now AE)	5.2.68	30.5.96	28.2.2004	CWP No. 13117/2024
3	Dalip Singh	12.12.72	1.2.95	28.2.2004	CWP No. 13119/2024
4	Alok Janveja (now AE)	29.9.69	22.5.96	28.2.2004	CWP No. 13121/2024
5	Suresh Kumar (retired AE)	18.01.67	16.2.96	28.2.2004	CWP No. 13123/2024
6	Virender Singh Rajta (Now AE)	23.12.68	22.2.96	28.2.2004	CWP No. 13125/2024
7	Jai Lal Kanta (retired AE)	4.9.66	9.4.96	28.2.2004	CWP No. 13127/2024
8	Chander Bhanu & others	9.6.69	31.10.03	15.6.2012	CWP No. 799/2025
9	Rajeev Bandral & others	7.5.73	31.10.03	15.6.2012	CWP No. 11468/2024
10	Chaman Lal	7.2.1966	31.10.03	15.9.2012	CWP No. 1705/2025
11	Sh. Hem Raj & Others.	29.11.69	10.1.05	1.9.2012	CWP No. 13957/2024
12	Deepak Bhardwaj & others	20.08.80	11.9.07	19.7.2014	CWP No. 11697/2024
13	Mohinder Kumar & Ors.	28.10.67	11.9.07	19.7.2014	CWP No. 570/2025
14	Manoj Kumar	15.7.84	11.9.07	19.7.2014	Ex.Pet.(T) 291/2024
15	Rajesh Kumar Sharma	12.6.68	11.9.07	28.6.2014	Ex.Pet(T) 281/2024
16	Surender Kumar Sharma (Design)	9.1.1973	24.7.07	28.6.2014	Exp. Pet. No. 269/2024
17	Ajay Kumar	14.5.68	20.4.12	12.5.2017	CWP No. 4248/2024

AND WHEREAS, various judgments/orders have been passed by the Hon'ble High Court in above mentioned CWP(s)/Exp. Petitions to consider the cases/representation of the petitioners in the light of judgment passed by the Hon'ble High Court of HP in CWP No. 2004/2017 titled as Taj Mohammad Vs State of HP & ors.

AND WHEREAS, the operative part of the judgment passed by the Hon'ble High Court of H.P. in CWP No. 2004/2017 titled as Taj Mohammad Vs. State of H.P. & Ors dated 03.08.2023 (relied upon judgment) is reproduced as under:-

"Therefore, as the foundation of the order passed by the learned Tribunal, subject matter of these writ petitions, was the judgment of this Court in Narender Singh Naik's case (supra), which judgment itself was based on the Five Judge Bench judgment of the Hon'ble Supreme Court in Direct Recruit's case (supra), and as the learned Tribunal rightly held that the services rendered by the original applicants on contract basis were liable to be counted for the purpose of seniority and consequential benefits after their regularization, as the initial appointment of the original applicants on contract basis was after following the procedure prescribed in the Recruitment & Promotion Rules, we do not find any infirmity in the said findings and further as we do not find any merit in the writ petitions, the same are dismissed by upholding the order passed by the Learned Tribunal. No order as to costs. Pending miscellaneous applications, if any, stand disposed of."

AND WHEREAS, the said judgment was assailed by the State Govt. by way of filling SLP(C) No. 25641-42/2023 before the Hon'ble Supreme Court of India and the same was dismissed by the Hon'ble Apex Court on 04.12.2023. Also the Department of Food & Civil Supply HP thereafter filed review petition i.e. CMP. M. No. 428/2024 which was also dismissed by Hon'ble High Court on 05.09.2024.

AND WHEREAS, the matter was also taken up with the Govt. for seeking advice/opinion on the point that as to whether the claim of petitioners are to be rejected as per the provision contained in "The Himachal Pradesh Recruitment and Conditions of Service of Government Employees Act, 2024(Act. No. 23 of 2025) and in turn the Secretary(PW) to the Govt. of HP vide letter No. PWD-A-E0(5)/1/2025 dated 29.03.2025 has advised as under:-

"This department in view of directions of Hon'ble High Court in COPC No.420/2024-titled Vipin Sharma & Ors. Vs. Devesh Kumar as well as enactment of the new act i.e. "The Himachal Pradesh Recruitment and Conditions of Service of Government Employees Act, 2024" by the Government had also examined the issue of seniority list of Assistant Engineer(Civil) in consultation with the Law Department wherein they have informed/advised that since the provisions of the Act ibid have come into effect w.e.f. 20.02.2025, therefore, the department may proceed further in the matter accordingly."

AND WHEREAS, the concept of the contract appointment was enforced in the State of Himachal Pradesh in 2003, witnessing the financial condition of the State and to reduce the financial deficit. The Central Government emphasizes that every rupee spent on salaries and allowances should translate into a specific measure for public good, promoting efficiency and accountability. The Hon'ble Finance Minister Late Dr. Mamohan Singh in his speech on fiscal reforms said that "There is no time to lose. Neither the Government nor the economy can live beyond its means year after year. The room for manoeuvre, to live on borrowed money or time, does not exist anymore. Any further postponement of macroeconomic adjustment, long overdue, would mean that the balance of payments situation, now exceedingly difficult, would become unmanageable and inflation, already high, would exceed limits of tolerance. For improving the management of the economy, the starting point, and indeed the centre-piece of our strategy, should be a credible fiscal adjustment and macro-economic stabilisation during the current financial year, to be followed by continued fiscal consolidation thereafter. This process would, inevitably, need at least three years, if not longer, to complete. **But there can be no adjustment without pain. The people must be prepared to make necessary sacrifices to preserve our economic independence and restore the health of our economy.**

The Finance Minister Yahswant Sinha in his Budget speech in 2000 said that "The challenge of fiscal management is not confined to the Central Government. The financial position of the State Governments has deteriorated sharply in the last few years. Revenue deficits have widened and borrowings are being increasingly used to meet revenue expenditure. **Fiscal reform at the State level has acquired great urgency.** While we have gone out of our way to help State Governments, the determination shown by some States to deal with these issues has also helped enormously. It will be my endeavour to take further collective measures in the next year for promoting fiscal reforms in the States".

In view of above specific policy announcement of the Central Government, the State of Himachal Pradesh had also taken the policy decisions to reduce the fiscal deficit

and steps were taken in all sectors in the State, including public employment sector. The State Government had introduced the Contract appointment as temporary appointment on fixed pay with the conditions as introduced in the recruitment and promotion rules. In view of these facts the State Government had introduced the contract appointments in the State on specific terms and conditions. The rules were amended and provision of contractual appointment were inserted in Rule 10 & Rule 15 A. It is pertinent to mention here that in Rule 10 & Rule 15 A are complete code in itself laying down the provisions/procedure for recruitment on contract basis and terms and conditions of contract appointments. Relevant part of Rule 10 & Rule 15 A are reproduced herein below:-

(b) For the existing title of Col. No. 10 and the existing provision against Col. No. 10, the following shall be substituted, namely:-

10. "Method of recruitment whether by direct recruitment or by promotion, deputation, transfer and the percentage of posts to be filled in by various methods."

(a) 85% by direct recruitment or on contract basis in the following manner:-

(i) By direct recruitment or on contract basis through concerned recruiting agency i.e. the H.P. Subordinate Service Selection Board, Hamirpur or as prescribed by the Government from time to time on merit.

.....45%

(ii) By direct recruitment or on contract basis at departmental level from amongst the candidate(s) who possesses the requisite professional qualification from the recognized technical institutions on the basis of seniority of the batch (batch wise basis).

.....20%

(iii) By appointment from amongst the candidates who were/are appointed on contract basis by the Department by adopting proper procedure and who possess the requisite professional qualification from the recognized technical institution having 07 years of continuous contract service in the Himachal Pradesh Public Works Department, if their performance and conduct during contract service has been found satisfactory;

Provided that for the purpose of appointment under this sub column the year wise combined seniority list shall be prepared wherein the candidate senior in batch in such recruitment year shall be reckoned senior to the candidate who has obtained diploma in Civil Engineering in subsequent batch;

Provided further that where in a recruitment year more than one candidate of the same batch are eligible to be considered for appointment then their inter-seniority will be determined with reference to their date of appointment in that recruitment year, or the merit, if any, prepared at the time of making selection for recruitment on contract basis, as the case may be.

.....20%

b) 15% by promotion

(d) Below the existing Col. No. 15, a new provision as Col. No. 15-A shall be incorporated; namely:-

15-A Selection for appointment to post by contract appointment.

(1)(a) Under this policy, the Junior Engineer (Civil) in Public Works Department, H.P. will be engaged on contract basis initially for one year, which may be extendable on year to year basis depending upon their performance and work and conduct on the job. However, their services will be terminated even prior to the completion of one year period, on issuance of one month notice or payment in lieu of the notice of one month, if available work load or their performance does not merit their retention.

(b) Selection on contract basis in respect of the vacancy(s) to be filled at the Departmental level shall be made by the Committee as may be constituted by the competent authority from time to time. The recruitment on contract basis against the posts falling to the direct recruitment quota shall be made by the concerned recruiting agency i.e. the H.P. Subordinate Services Selection Board, Hamirpur.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules.

(d) Contract appointee so selected under these Rules will not have any right to claim regularization or permanent absorption in the Government job.

(e) The age and qualification for the contract appointment will be as per the provisions contained in Columns No. 6 and 7 of the R&P Rules.

(II) EMOLUMENT PAYABLE:

Contract appointee will be paid a lump sum/fixed monthly wage as fixed by the Government from time to time.

(III) APPOINTING/DISCIPLINARY AUTHORITY

The contract appointment will be made against the vacant posts by the concerned Superintending Engineer of the circle. The Superintending Engineer of the concerned circle will be appointing and disciplinary authority.

(IV) SELECTION PROCESS:

i) The Engineer-in-Chief, Public Works Department, H.P. after obtaining the approval of the Government for filling up the vacant posts on contract basis, will advertise the details of the vacant posts in two leading newspapers and invite applications from candidates having the prescribed qualifications and fulfilling the other eligibility conditions as prescribed in these Rules and will also requisition the names from the Employment Exchanges in the Pradesh at least five times the number of persons to be recruited on contract in term of the H.P. Compulsory Notification of vacancies Act, 1959. However, in respect of the vacancy(s) falling to the share of the direct recruitment quota, where recruitment is to be done through HP Subordinate Services Selection Board, the E-in-C, PWD will place the requisition with the concerned recruiting agency i.e. H.P. Subordinate Services Selection Board, Hamirpur and the concerned recruiting agency will advertise the details of the vacant posts in at least two leading newspapers and invite applications from the candidates having the prescribed qualifications and fulfilling the other eligibility conditions as prescribed in these Rules.

Further, selection for appointment to the post(s) in the case of contract appointment recruitment will be made on the basis of viva-voce test, or if considered necessary or expedient by a written test the standard/ syllabus etc. of which will be determined by the Departmental Selection Committee as may be constituted from time to time in the case of vacancy(s) to be filled up at the Departmental level or by the concerned recruiting agency in the case of the vacancy(s) falling to the direct recruitment quota.

- ii) For the assessment of work of the contractual Junior Engineers (Civil), annual performance report will be maintained at the Superintending Engineer level.
- iii) The performance reports will form the basis of assessment by the Committee to make recommendations for regular appointment after completion of 7 years contractual service.

(V) SELECTION COMMITTEE:

- (a) For the post(s) to be filled up at Department level:

The selection will be made by conducting interviews and assessing the candidates as per the distribution of marks given below:-

(b) For the post(s) falling to the direct recruitment Quota:

As may be constituted by the concerned recruiting agency i.e. the H.P. Subordinate Services Selection Board, Hamirpur from time to time.

After selection of a candidate for appointment he/she shall sign an agreement as per Annexure-B appended to these Rules.

1. Contract appointees will be paid a fixed/lump sum monthly wage as fixed by the Government from time to time.
2. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good.
3. Contract appointment shall not confer any right to the incumbent for regularization in service at any stage.
4. Contract appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated up to one year. No leave of any other kind is admissible to the contract appointee. He/ She shall not be entitled for Medical Reimbursement & LTC etc. Only Maternity Leave will be given as per rules.
5. Unauthorized absence from the duties without the approval of the controlling officer shall automatically lead to the termination of the contract. Contract

- appointee shall not be entitled for salary for the period of absence from duty.
6. Transfer of contract appointee ordinarily will not be permitted from one place to another except on administrative grounds. Difficult area sub-cadre posting policy will be applicable on them.
7. Selected candidate will have to submit a certificate of his/her fitness from a Govt./ Registered Medical Practitioner. Women candidate, pregnant beyond 12 weeks will be considered temporarily unfit till the confinement is over. The women candidates will be re-examined for the fitness by an authorized Medical Officer/Practitioner.
8. Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular staff members.

(VIII) RIGHT TO CLAIM REGULAR APPOINTMENT:

The candidate engaged on contract basis under these rules shall have no right to claim for regularization/ permanent absorption as Junior Engineer (Civil) in the Department at any stage.

(e) For the existing provision against Col. No. 16, the following shall be substituted namely:-

"The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled Castes/Scheduled Tribes/ Other Backward Classes/ Other categories of persons issued by the Himachal Pradesh Government from time to time.

ANNEXURE-"B"

FORM OF CONTRACT/AGREEMENT TO BE EXECUTED BETWEEN THE JUNIOR ENGINEER(CIVIL) AND THE GOVERNMENT OF HIMACHAL PRADESH THROUGH HP PUBLIC WORKS DEPARTMENT.

This agreement is made on this day of in the year between Smt./Sh. S/o/D/o Sh. resident of

contract appointee (hereinafter called the 'FIRST PARTY), AND the Governor, Himachal Pradesh (hereinafter SECOND PARTY).

WHEREAS, the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a Junior Engineer (Civil) on contract basis on the following terms and conditions:-

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a Junior Engineer(Civil) for a period of 1 year commencing on day of and ending on the day of It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall ipso-facto stand terminated on the last working day i.e. on..... and information notice shall not be necessary.
2. Contract appointee shall be paid monthly wages as equal to initial of the pay scale + Dearness pay of the post or as fixed by the Govt. from time to time.
3. Contract appointee so selected under these rules will not have any right to claim regularization or permanent absorption in Government job.
4. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good.
5. Contract appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated upto one year. No leave of any other kind is admissible to the contract appointee. He/she shall not be entitled for Medical Reimbursement & LTC etc. Only Maternity Leave will be given as per rules.
6. Unauthorized absence from the duties without the approval of the controlling officer shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for wages for the period of absence from duty.
7. Contract appointments will be made against vacant posts in difficult and tribal areas or the office jobs as per requirement. Transfer of contract appointee will not be permitted from one place to another. However, at the time of renewal of contract if any, such appointee can be appointed at different place or office on administrative grounds.
8. Selected candidate will have to submit a certificate of his/her fitness from a Govt./ Registered Medical Practitioner. Women candidate, pregnant beyond 12 weeks will be considered temporarily unfit till the confinement is over. The women candidates will be re-examined for the fitness by an authorized Medical Officer/ Practitioner.
9. Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular staff members.

In witness whereof, the parties hereto have caused these presents to be signed on

the day, month and year first above written.

WITNESSES

1.....
(Name and full address)

2.....
(Name and full address)

(Signature of first party)

WITNESSES

1.....
(Name and full address)

2.....
(Name and full address)

(Signature of second party)

In view of above factual position that recruitment and promotion rules were neither read down nor declared to be ultra vires in the judgment of Taj Mohammad's case, therefore said Judgment is not applicable to the facts of this case. In Taj Mohammad's case, the Hon'ble Court decided the controversy between two set of employees with respect to their seniority position and affected persons were impleaded as necessary parties. The petitioners in this case have not impleaded the affected parties as respondent and filed the petitions after huge delay. The petitioners have not explained the delay and laches in their petitions.

AND WHEREAS, the Petitioners were initially appointed on contract basis and had accepted the terms and conditions stipulated in their appointment orders issued to them without any protest. It is pertinent to mention here that the petitioner(s) had also accepted the regularization so offered to them without any objections. It is also pertinent to mention here that the recruitment and promotion rules in force at the time of appointment prescribe the contract appointment as mode of appointment. The harmonious reading of the rules clearly suggests that the petitioners were not entitled for seniority and other service benefits of appointment as the contractual appointments are governed by the terms and conditions of the agreements between the parties. It is further provided in the instructions issued by the Department of Personnel from time to time regarding regularization of contract employees of the State, it has been stipulated that the regularization shall be prospective i.e. with immediate effect. The persons engaged on a contract basis were aware at the time of their engagement that they were not entitled to the seniority and other service benefits for the period of services rendered on contract basis. Such persons had

accepted these terms and conditions and signed contracts to this effect which are binding on both the parties and could not be challengeable at later stage being barred by law of estoppel, delay & laches, and acquiescence.

AND WHEREAS, the appointment on contract basis was a policy decision of the government to bring fiscal prudence in view of facts explained above. It is pertinent to mention here that petitioners had never challenged the policy decision of the government to introduce the contract appointment. In case, the contract appointees are treated as equivalent to the regular employees, it will put a huge burden on the State Exchequer. Due to the financial crunch and considering the fact that there will be heavy financial burden upon the State

to pay the actual emoluments to the contract employee, which may affect the development of a small State like State of Himachal Pradesh, a policy decision was taken by the State to make appointments on contract basis on mutually agreed terms and conditions between employer and employee. It is further observed that unless it is found that such a policy decision is arbitrary and/or violative of Constitution, statute or any other provision of law, the same would have full force of law and all employees are bound by such contract and policy decision.

AND WHEREAS, the settled seniority position will also get unsettled if the claim of the petitioners are considered after such long delay. The contract appointments have been made since 2003 and treating them as equivalent to regular employees will result into revising the seniority lists for the last more than 22 years and many employees may have to be demoted to adjust the contract appointees. The persons engaged on a contract basis were aware at the time of their engagement that they were not entitled seniority and other service benefits for the period of contract service. Such persons had accepted these terms and conditions and signed contracts to this effect with wide open eyes and without any pulls or pressure. The principles of non-bargaining position will also not be applicable to the contract employees as they are educated and prudent person, who were aware about their rights. Not only this but this fact was also reflected in the advertisement notice. The contract appointees had participated in the selection process on the terms and conditions mentioned in the advertisement, therefore after more than decade or unreasonable time, such employees cannot turn around and seek seniority and other service benefits.

WHEREAS, the Direct Recruit case (1990) 2 SCC 715 the Hon'ble Supreme court was dealing with case having following facts: -

For appreciating the controversy which has to be resolved, a brief survey of several sets of rules is necessary. The parties are Engineers in the employment of the State of Maharashtra excepting the petitioners in W.P. Nos. 3947-48 of 1983 who are in Gujarat service. Avoiding the details, the position may be briefly stated by dividing the entire period into 4 sub-periods and mentioning the scope of such of the provisions of the rules which have direct bearing, on the questions involved in the present cases. By a resolution of the year 1937 of the Government of Bombay, two new Provincial Engineering Services described as the Bombay Engineering Service Class I consisting of posts of Chief Engineer, Superintending Engineers, Executive Engineers and Assistant Engineers Class I, and the Bombay Engineering Service Class II, having officers designated as Deputy Engineers, were created. All the posts were permanent. In 1939, Rules were made for regulating the methods of recruitment to the said Services which directed the recruitment to be made either by nomination from amongst the students of the College of Engineering, Pune or by promotion of officers holding inferior posts. The next Rules to which the parties in the present cases have made reference were those made by the resolution dated 21-11-1941 for determination of the seniority of the direct recruits and the promoted officers, containing only two rules out of which R. 1 admittedly is not relevant for the present purpose. R. 2 said that in case of officers promoted to substantive vacancies, the seniority would be determined with reference to the date of their promotion to the substantive vacancies. In 1960, detailed rules for recruitment to Class I and Class II Services were framed by a Government resolution dated 29-4-1960. Learned counsel for the parties have referred to these Rules as the 1960 Rules and have made elaborate arguments with reference to some of the provisions. In place of nomination from the successful students of College of Engineering, Pune as direct recruits, these Rules prescribed for a competitive examination to be held by the Public Service Commission, and introduced a quota system by fixing 4 ratio of appointments of direct recruits and promotees.

The Rules also made reference to promotion, as Executive Engineers on officiating basis, and Temporary Deputy Engineers and officiating Deputy Engineers. By R. 8 the posts of Deputy Engineers were reorganised, and by sub-rule (iii) it was provided that the direct recruits in any year shall in a bunch be placed senior to promotees confirmed during that year. A review of these Rules was later undertaken by the Government and ultimately in partial supersession thereof a fresh set of rules, described by the learned counsel in the present cases as the 1970 Rules, were adopted by another Government resolution. In the meantime, however, a serious dispute in regard to the interpretation of one of the

provisions of the 1960 Rules arose which was settled by this Court in the case of P. Y. Joshi v. state of Maharashtra, (1970) 2 SCR 615. The judgment in this case has been the subject matter of considerable discussion during the hearing of present cases. By R. 5 of the 1970 Rules, Class I and Class II Services were redefined and R. 12(a) declared that the cadre of Deputy Engineers would consist of all the direct recruits, the confirmed Deputy Engineers and the other officers who were officiating as Deputy Engineers on 30-4-1960.

WHEREAS, Direct Recruit case is dealing with rules / resolution of the year 1937 of the Government of Bōmbay, 1939, Rules were made for regulating the methods of recruitment to the said Services, 1960 Rules and 1970 Rules.

Based up on the said rule position the Hon'ble Supreme Court of India had held as under:-

(A) *Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.*

It is pertinent to mention here that the law laid down in the Direct Recruit case was based on facts that both party to the lis were appointed on regular basis and merely date of confirmation will not amount to date of entry into the civil service. In those facts and provisions of the rules governing the service condition in direct recruit case, the Hon'ble Supreme Court had laid down the principle as noted above.

The Hon'ble Court has placed reliance upon the Direct recruit Judgment and herein this order state government is not commenting upon the applicability of the judgment in view of specific rules, governing the service condition of the petitioner. It is pertinent to mention here that, while deciding the Taj Mohammed Judgment, Ld. Tribunal as well as The Hon'ble High Court has not considered the recruitment and promotion rules governing the service condition of the petitioner, whereas 'direct recruit' case is based on rule position of govt. of Bombay.

It is further mentioned here that the Taj Mohhamad case, petitioners therein had impleaded the affected parties, whereas, present petitioners have not impleaded any affected party. It is also pertinent to mention here that rules specifically provide that the appointment on contract basis as a temporary appointment and is not an appointment to the service till the services are regularised in accordance with the policy. It is further provided in

the regularisation policy that the regularisation shall be prospective i.e. with immediate effect, hence the mandate of the policy was clear that a contract employees appointed under contract policy of the State shall be treated to be holder of civil post only after his /her regularisation.

AND WHEREAS, the H.P. recruitment and conditions of service of Govt. Employees Act, 2024 has been notified vide notification No. LLR-D(6)-36/2024-LOOSE Dated 07.02.2025 and the Govt. vide department of personnel notification PER (AP)-C-A(3)-6/2024 dated 19.02.2025 has appointed 20th February 2025 as the date on which the provisions of the aforesaid act shall come in to force. The relevant provision of the Act ibid regarding "Extension of service benefits" are reproduced below:-

"(1). The service benefits available under various Central Civil Services Rules, as applicable in the State, the H.P. Civil Services Rules, and other service benefits such as, seniority, increment, promotion etc. shall be applicable only to the employees appointed on regular basis.

(2). No person working in any Govt. Department, who has not been appointed as per the provision of this act and rules made thereunder on regular basis shall be entitled service benefits available under the various Central Civil Services Rules, as applicable in the State, the H.P. Civil Services Rules and other service benefits such as seniority, increment, promotion etc.:

Provided that a person shall be entitled for service benefits only on the date of regularization of his services:

Provided further, that a person whose services have been regularized after 12th December, 2003 shall also be entitled to service benefits on date of regularization, as if their service have been regularized under the provision of this act.

Provided also that service benefits already extended to the persons from the service other than regular service shall stand withdrawn."

AND WHEREAS, that the another ground for rejection of this case is that the State Government has enacted the Himachal Pradesh requirement and conditions of service of Govt. Employees Act 2024 to take away the basis of judgment, whereupon the declaration was made that contract employees are entitled for all service benefits at par with the regular employees of the government.

AND WHEREAS, that Civil Supply Department in Taj Mahomaad and Lekh Raj Case vide Notification dated 04.03.2025, has withdrawn the promotion orders of Inspector Grade-I, (Class-III- Non Gazetted) to the post of Food and Supplies Officers

(Class-II Non-Gazetted) issued vide Notification No.FDS-b (2)-5/2024-I dated 26th October, 2024 and posting orders of Food Supplies Officers issued on 18th November, 2024 respectively.

AND WHEREAS, the contractual appointment is not a public appointment, and the said contractual appointment is merely an agreement between two parties. Since, the service conditions of the persons working on contract basis are regulated as per the agreement signed between the parties, the various service rules applicable to the Government employees, do not apply to such persons and as such the contract appointees are not part of public services. On account of the inclusion of contract appointments in the recruitment and promotion rules, these appointments are being treated as appointments to the public services wrongly, which is totally against the intention and purpose of engaging the persons on contract basis.

Hence, it is necessary to harmonise the interests of the persons appointed on regular basis to the public services and contract appointees. The Hon'ble High Court has issued the declaration on the basis of direct recruitment case whereas, the principles governing the contract appointment as mentioned in the rules were neither considered nor declared as ultra vires to the Article 309 of the constitution of India.

AND WHEREAS, the Hon'ble Supreme Court in para 76,77,78 and 79 of judgment passed in the matter titled as B.K. Pavitra Vs. Union of India (2009)16 SCC 129 has held that curative legislation is constitutionally permissible. The relevant paragraphs of the judgment are reproduced as under:-

“76. The legislature has the plenary power to enact a law. That power extends to enacting a legislation both with prospective and retrospective effect. Where a law has been invalidated by the decision of a constitutional court, the legislature can amend the law retrospectively or enact a law which removes the cause for invalidation. A legislature cannot overrule a decision of the court on the ground that it is erroneous or is nullity. But, it is certainly open to the legislature either to amend an existing law or to enact a law which removes the basis on which a declaration of invalidity was issued in the exercise of judicial review. Curative legislation is constitutionally permissible. It is not an encroachment on judicial power. In the present case, the State Legislature of Karnataka, by enacting the Reservation Act, 2018, has not nullified the judicial decision in B.K. Pavitra (1), but taken care to remedy the underlying cause which led to a declaration of invalidity in the first place. Such a law is valid because it removes the basis of the decision.

77. These principles have consistently been reiterated in a line of precedents

emerging from this Court. In *Utkal Contractors & Joinery (P) Ltd.*, this Court held: (SCC p. 759, para 15)

"15. "The legislature may, at any time, in exercise of the plenary power conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively. That of course, is subject to the legislative competence and subject to other constitutional limitations. The rendering ineffective of judgments or orders of competent courts by changing their basis by legislative enactment is a well-known pattern of all validating acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power. The legislature, however, cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision."

78. The legislature has the power to validate a law which is found to be invalid by curing the infirmity. As an incident of the exercise of this power, the legislature may enact a validating law to make the provisions of the earlier law effective from the date on which it was enacted (*United Provinces v. Atiga Begum and Rai Ramkrishna vs. State of Bihar*). These principles were elucidated in the decision of this Court in *Prithvi Cotton Mills Ltd.* The judgment makes a distinction between a law which simply declares that a decision of the court will not bind (which is impermissible for the legislature) and a law which fundamentally alters the basis of an earlier legislation so that the decision would not have been given in the altered circumstances. This distinction is elaborated in the following extract: (*Prithvi Cotton Mills Ltd. Case 41, SCC pp. 286-87, para 4*)

"4. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal.

79. In *State of T.N. V. Arooran Sugars Ltd.*, a Constitution Bench of this Court recognised the power of the legislature to enact a law retrospectively to cure a defect found

by the Court. It was held the in doing so, the legislature did not nullify a writ or encroach upon judicial power. The legislature in remedying a deficiency in the law acted within the scope of its authority. This Court held:

“16. It is open to the legislature to remove the defect pointed out by the court or to amend the definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been an encroachment by the legislature over the power of the judiciary. A court’s directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect.”

The same principle was formulated in the decision of this Court in Virender Singh Hooda V. State of Haryana(2004) 12 Supreme Court cases (SCC P. 616, para59)

“59. vested rights can be taken away by retrospective legislation by removing the basis of a judgment so long as the amendment does not violate the fundamental rights. We are unable to accept the broad proposition... that the effect of the writs issued by the courts cannot be nullified by the legislature by enacting a law with retrospective effect. The question, in fact, is not of nullifying the effect of writs which may be issued by the High Court or this Court. The question is of removing the basis which resulted in issue of such a writ. If the basis is nullified by enactment of a valid legislation which has the effect of depriving a person of the benefit accrued under a writ, the denial of such benefit is incidental to the power to enact a legislation with retrospective effect. Such an exercise of power cannot be held to be usurpation of judicial power.”

AND WHEREAS, the Hon’ble Supreme Court in para 20 of the case titled as State of Tamil Nadu Vs. Arooran Sugars Ltd. (1997) 1 Supreme Court Cases 326 which is reproduced as under:-

“Reference was also made on behalf of the respondent to the judgment of this Court in the case of A.V. Nachane Vs. Union of India where it was observed in respect of the Amendment Act, which was the subject matter of controversy in that case, that it could not mollify the effect of the writ issued by this Court in D.J. Bahadur case, relying on aforesaid judgment in Madan Mohan Pathak. From a bare reference to SCR p. 267 (SCC p. 220) of the report, it appears that the learned judges placed reliance on the defect pointed out in the case of Madan Mohan Pathak by Bhagwati, J. quoted above. In other words, on peculiar facts and circumstances of the case it was held that the effect of the judgment in the case of D.J.

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Bahadur*4 had not been taken away by the Amending Act. On behalf of the respondent, reliance was also placed on the cases of Janapada Sabha v. Central Provinces Syndicate Ltd., Municipal Corpn. of the city of Ahmedabad v. New Shrock Spg. and Wvg. Co. Ltd. In the case of Govt. of A.P. v. Hindustan Machine Tools Ltd., the aforesaid judgments in the cases of Janapada Sabha v. Central Provinces Syndicate Ltd. and Municipal Corpn. of the city of Ahmedabad v. New Shrock Spg. and Wvg. Co. Ltd. were distinguished by pointing out: (SCC pp. 279-80, paras 13 and 14)

The decisions on which the respondent relies are clearly distinguishable. In the Municipal Corpn. of the city of Ahmedabad v. New Shrock Spg. & Wvg. Co. Ltd., the impugned provision commanded the Corporation to refuse to refund the amount illegally collected by it despite the orders of the Supreme Court and the High Court. As the basis of these decisions remained unchanged even after the amendment, it was held by this Court that the legislature had made a direct inroad into the judicial powers. In Janapada Sabha v. Central Provinces Syndicate Ltd., the Madhya Pradesh Legislature passed a Validation Act in order to rectify the defect pointed out by this Court in the imposition of a cess. But the Act did not set out the nature of the amendment nor did it provide that the notifications issued without the sanction of the State Government would be deemed to have been issued validly. It was held by this Court that this was tantamount to saying that the judgment of a court rendered in the exercise of its legitimate jurisdiction was to be deemed to be ineffective. The position in State of T.N. v. M. Rayappa Gounder, was similar. In that case the reassessments made under an Act which did not provide for reassessments were attempted to be validated without changing the law retrospectively. This was considered to be an encroachment on the judicial functions.

In the instant case, the Amending Act of 1974 cures the old definition contained in Section 2(15) of the vice from which it suffered. The amendment has been given retrospective effect and as stated earlier the legislature has the power to make the laws passed by it retroactive. As the Amending Act does not ask the instrumentalities of the State to disobey or disregard the decision given by the High Court but removes the basis of its decision, the challenge made by the respondent to the Amending Act must fail. The levy of the house tax must therefore be upheld."

AND WHEREAS, the word "contract appointment" had been included in Col. No. 10 of the R&P Rules of the Junior Engineer (Civil). The appointment on contract basis has wrongly been treated as appointments to the public services. As per terms and conditions of a contract appointment in the R&P rules, services of contract appointment are purely temporary and provisions of service rules like FR, SR, Leave Rules, GPF Rules,

Pension Rules and Conduct Rules etc. are not applicable to the appointees on contract basis. The matter was placed before the higher authorities and it is felt that in case, the contract appointees are treated as equivalent to the regular employees, it will not only put a huge burden on the State Exchequer, but the settled position will also get unsettled and it will result into revising the seniority lists for the last more than 22 years and many employees may have to be demoted to adjust the contract persons. In order to settle the issue, the Govt. of HP as per the provisions of Himachal Pradesh Recruitment and Conditions of service of Govt. Employees Act, 2024 supra, notified vide notification No. LLR-D (6)-36/2024, LOOSE Dated 7th February, 2025, and the same came into force w.e.f. 20.02.2025, and therefore, the contentions of the petitioners regarding counting of their contractual services for the purpose of seniority, annual increment, fixation of pension with all consequential benefits etc. are baseless, absurd.

AND WHEREAS, the Hon'ble Supreme Court in the matter of Agricultural Income Tax Officer and Another Vs. Goodricke Group Limited and Another (2015) 8 Supreme Court Cases 399 wherein, the facts of the case are that:-

"Two changing provisions levying cess on production of tea were struck down as unconstitutional on the ground that the basis of levy (that is, movement or despatch of manufactured tea) was not covered under the legislative competence of the State Legislature under Schedule VII List II Entry 49 (taxes on lands and buildings) and that the said levy encroached upon the legislative field covered under Schedule VII List I Entry 84 (excise) and further contravened Article 301 and not saved by Article 304(b) of the Constitution of India. However, subsequently, by an amendment the defect was cured by changing the basis of the charging provision (that is, by levying cess on the yield or income from a given unit of land) and bringing the levy within the legislative competence of the State Legislature. The two cesses imposed by the said amendment were imposed retrospectively from 1981 and 1984 respectively." Partly allowing the appeal, the Supreme Court in para 16 and 17, 18, 19 and 20 held as under:-

"16. In the present case, the 1989 Amendment Act expressly seeks to remove the basis of Buxa Doors judgment by retrospectively changing the basis of the levy of the cesses mentioned above. In the present case, what is done away with by the amending Act of 1989 is a declaratory judgment holding the above cesses to be invalid. On all these grounds also the judgment in Madan Mohan Pathak case is distinguishable.

17. However, insofar as interest is concerned, post Goodricke Group Ltd. case, we are of the view that Mr C.U. Singh is correct in supporting the impugned judgment.

Goodricke Group Ltd. case" made it clear that the petitioners shall pay cesses stayed by an order of this Court along with interest @ 12% p.a. The expression "cesses stayed" has reference to the interim order dated 25-1-1990 which had stated that there would be no enforcement of demand under the Act or Rules and in the meanwhile, assessment may be made. We have been informed that assessments were made with effect from July 1993 onwards and consequential demands have been made with effect from 1995 onwards. It is clear, therefore, that the impugned judgment is right in holding that with regard to the payment of interest by the petitioner on the amount of cess payable by virtue of Goodricke Group Ltd. case, interest would only be payable from the respective dates of assessment for the various relevant periods till recovery.

18. On facts here, no question arises as to whether interest would become payable from the date of demand or from the date of the assessments inasmuch as the counsel for the respondents supports the impugned judgment? on this score and is not aggrieved thereby.

19. The respondents here have made payment of interest from time to time to the State. These payments will be adjusted against any sum that would become payable as a result of this judgment.

20. The appeal is disposed of accordingly."

AND WHEREAS, the Hon'ble Supreme Court in the matter of Virender Singh Hooda and others Vs. State of Haryana and another. (2004) 12 Supreme Court Cases 588, in para 67 and 69 held as under:-

"67. The result of the aforesaid discussions is that retrospectivity in the Act cannot be held to be ultra vires except to a limited extent which we will presently indicate. It is not a case of usurpation of judicial power by the Legislature. The legislature has removed the basis of the decision in Hooda and Sandeep Singh cases by repealing the circulars. The Act is also not violative of Articles 14 and 16 of the Constitution. The candidates have right to posts that are advertised and not the ones which arise later for which a separate advertisement is issued. A valid law, retrospective or prospective, enacted by the legislature cannot be declared ultra vires on the ground that it would nullify the benefit which, otherwise would have been available as a result of applicability and interpretation placed by a superior court. A mandamus issued can be nullified by the legislature so long as the law enacted by it does not contravene constitutional provisions and usurp the judicial power and only removes the basis of the issue of the mandamus.

69. In Lohia Machines Lid, v. Union of India on the aspect of reasonableness and arbitrariness of amending law, it was observed that the power and competence of

Parliament to amend any Statutory provision with retrospective effect cannot be doubted. Any retrospective amendment to be valid must, however, be reasonable and not arbitrary and must not be violative of any of the fundamental rights guaranteed under the Constitution. In considering the question as to whether the legislative power to amend a provision with retrospective operation has been reasonably exercised or not”

AND WHEREAS, the Hon'ble Supreme Court in the matter of Divesh Sharma Vs. Union of India and Others. 2023 SCC Online SC 985, in para 76 and 83 held as under:-

“76. In Brij Mohan Lal v. Union of India this Court reiterated on this aspect and made out a distinction as to where an interference to a decision is required, and whereas it is not:

“100. Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as:

- (I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.
- (II) The change in policy must be made fairly and should not give the impression that it was so done arbitrarily on any ulterior intention.
- (III) The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc.
- (IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.
- (V) It is de hors the provisions of the Act or legislations.
- (VI) If the delegate has acted beyond its power of delegation.

101. Cases of this nature can be classified into two main classes : one class being the matters relating to general policy decisions of the State and the second relating to fiscal policies of the State. In the former class of cases, the courts have expanded the scope of judicial review when the actions are arbitrary, mala fide or contrary to the law of the land; while in the latter class of cases, the scope of such judicial review is far narrower. Nevertheless, unreasonableness, arbitrariness, unfair actions or policies contrary to the letter, intent and philosophy of law and policies expanding beyond the permissible limits of delegated power will be instances where the courts will step in to interfere with government policy.

83. What the Rajasthan High Court had stated above is the settled legal position. In a recent three Judge judgment of this Court in State of Manipur Vs. Surja kumar Okram. **This position that a statute which is made by a competent legislature is valid till it is declared**

unconstitutional by a court of law; has been reiterated."

AND WHEREAS, the Hon'ble Supreme Court in the matter of Sri Ranga Match Industries and Others. Vs. Union of India and Others. (1994) Supp(2) Supreme Court Cases 726, in para 18 held as under:-

18. "In this connection, it may be reiterated that it is open to the legislature to rove the basis of, or rectify the defect/lacuna in the law on which a judgment is based and thereby render the judgment inoperative. What is relevant is whether the basis of the judgment has been removed or not. So long as the manner in which the basis has been removed is within the legislative competence, the Court cannot interfere. There is no set method or a prescribed method. The method adopted in this particular case cannot be said to be an impermissible one. As emphasised hereinbefore, the superseding of Notification No. 99 of 1980 with prospective effect is not questioned by the appellants. If it can be done prospectively, it can equally be done with retrospective effect and in this case, it has been done by a parliamentary enactment. More than one decision of this Court has upheld this power of Parliament/legislature. In *M.K. Venkatachalam, I.T.O.* the order of assessment had become final. Later the *SRI RANGA MATCH INDUSTRIES v. UNION OF INDIA* (Jeevan Reddy, J.) relevant provision was amended' with retrospective effect and on that basis the earlier order of Income Tax Officer was rectified under Section 35 of the Indian Income Tax Act, 1922. It was held to be permissible. Similarly, in *Sunder Dass v. Ram Prakash* the finality of a decree passed by a civil court was held to have been disturbed by a retrospective amendment of law. Because of the retrospective amendment of law, it was held, the decree which was validly passed and had become final, has been rendered in executable and that the said objection can be raised in the execution proceedings.

NOW THEREFORE, the undersigned after perusal of the record, facts and law laid down by the Hon'ble Supreme Court *ibid*, the representations of the petitioners have been considered and rejected, keeping in view the facts that recruitment and promotion rules were neither read down nor declared to be ultra vires in the judgment of Taj Mohammad, therefore said Judgment is not applicable to the facts of above cases. In Taj Mohammed case the Hon'ble court decided the controversy between two set of employees with respect to their seniority position and affected persons were impleaded. The petitioners in this case have not impleaded the affected parties as respondent and filed the petitioners after huge delay of sixteen years. The petitioners have not explained the delay and laches in their petitions.

Whereas, the Hon'ble High Court has already dealt the issue of implementation of the judgments of the Hon'ble Supreme Court after huge delay. Hon'ble

High Court has already rejected the implementation of judgment in R K Bharwal case wherein a petition was filed seeking benefit of the judgment by petitioners Suresh Kapoor (CWP 1218/2021 dated 1.12.2022) and others after a delay of more than six years. The Hon'ble court has held as under:-

As regards the service matters, more particularly, pertaining to seniority and promotion, the delay is to be strictly construed or else it would amount to unsettling the settled matters after a lapse of time. A person aggrieved by an order of promotion should approach the Court at least within six months or at the most a year of such promotion. It has been further held that it is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 of the Constitution of India in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle matters.

Whereas, the petitioners are claiming benefits after a lapse of more than 15 years and in large number of cases more than a decade. In the facts of this case the petitions were filed after about sixteen years. Therefore, the case of the petitioners are squarely covered with the Suresh Kapoor Judgment. It is important to mention here that the Suresh Kapoor Judgment is upheld by the Hon'ble Supreme Court in SLP © 9749 of 2023.

The Hon'ble Supreme Court has upheld that the legislature can nullify the basis of judicial pronouncements through valid law enacted to rectify defects in service rules, provided it does not violate constitutional provisions. In view of this settled position of law, the ratio of Taj Mohammad Judgment is not applicable and the provisions of Act, 2024 which have retrospective effect from 2003, thereby the basis of judgments were taken away, including the Taj Mohammad's judgement shall prevail.

Therefore, the petitioners claim for counting their contractual service for seniority and other benefits from retrospective date is no longer tenable in light of the 'Himachal Pradesh Recruitment and Conditions of Service of Government Employees Act, 2024, which have retrospective effect, which explicitly excludes contractual service from being counted for such benefits. The persons engaged on a contract basis were aware at the time of their engagement hence, they were not entitled for seniority and other service benefits for the period of contract service. Such persons had accepted these terms and conditions and

signed contracts to this effect. The State Legislature's action to exclude contractual appointment from retrospective effect though Said, Act 2024 nullifies the claims of petitioners, accordingly, the case/representations of the petitioners are hereby considered and rejected in view of above facts and circumstances.

May inform the parties accordingly.

Signed by

Narinder Pal Singh

Date: 31-07-2025 18:45:15

Engineer-in-Chief,
HP.PWD., Shimla-2.

No. **PBW-B020(43)/2/2025-ESTT.- III:-**

Copy is forwarded to the following for information:-

1. The Secretary (PW) to the Govt. of HP please.
2. All the Chief Engineers in HPPWD.
3. The Ld. Distt. Attorney, HPPWD., Shimla-2.
4. All the Superintending Engineers working in HPPWD.
5. All the Executive Engineers working in HPPWD.
6. The Executive Engineer(IT), HPPWD., Shimla-2.
7. All the above mentioned Petitioners .
8. Guard file.

Signed by Vijay Kumar
Dhiman

Date: 31-07-2025 18:53:41

Registrar,
HP.PWD, Shimla-2.

Shimla Dated:- 4/8/2025